

(2022) 03 CAL CK 0056
In the Calcutta High Court
Case No : FMA No. 1156 Of 2021

State Of West Bengal & Ors.

APPELLANT

Vs

Ajoy Kumar Bhowmick & Ors.

RESPONDENT

Date of Decision : 17-03-2022

Acts Referred:

Citation : (2022) 03 CAL CK 0056

Hon'ble Judges : I. P. Mukerji, j;Aniruddha Roy, J

Bench : Division Bench

Advocate : Pinaki Dhole, Avishek Prasad, Partha Sarathi Bhattacharya, Raju Bhattacharya, Tanweer J. Mondal

Final Decision : Disposed Of

Judgement

I. P. Mukerji, J

From 20th November, 1969 to 8th February, 1982 the first respondent/writ petitioner (hereinafter referred to as 'the respondent') taught chemistry as an assistant teacher in three aided schools. From 20th November, 1969 to 20th April 1973 he taught in Rajballavpur Rangilabad Ramlal Memorial High School, from 21st April, 1973 to 6th July, 1981 in Shirakole Yudhisthir Nanilal High School and from 7th July, 1981 to 8th December, 1982 in Bratachari Vidyasram. Out of these three schools the last one Bratachari Vidyasram is an aided higher secondary school. On 9th February, 1982, he joined St. Lawrence High School, Kolkata, an unaided but government DA getting school as an assistant teacher and continued to teach there till 31st March, 2005. He left that school and joined an aided high school, Sonamukhi Janakalyan Vidyapith as Headmaster from 1st April, 2005 and continued to teach there till 31st January, 2009.

Although the service rendered in the aided schools is qualifying service in terms of the length of service rendered, which should be atleast ten years, for the purpose of receiving pension, the appellant refused to recognise the respondent as eligible for pension. According to them by working in an unaided school St.

Lawrence High School from 9th February, 1982 to 31st March, 2005, there had been a break in the respondent's service and that by operation of some decisions of the government embodied in memoranda discussed below, the respondent was ineligible for pension.

By a memorandum dated 15th May, 1985 it was provided that death cum retirement benefits would be paid to, inter alia, aided educational institutions, excluding DA getting schools according to a scheme which was annexed to it. On 20th May, 1988, a further memorandum was issued by the appellant to add to and qualify the 1985 notification. It was to the effect that the service rendered by, inter alia, a teaching employee in an unaided institution would be counted towards pensionable service provided he retired from an aided institution. In a complete turnaround another notification, described as a clarification was sought to be published by the appellant on 19th April, 2006 to the effect that if a teacher served in an aided school followed by service in a DA getting school and thereafter retired from an aided school his service in the aided school prior to his service in the DA getting school would not be counted for pensionary benefits due to "break in service".

The concept of "break in service" was the brain child of maker of the 2006 notification. The earlier memorandum had very plainly provided that if the respondent rendered service in both aided and unaided schools but retired from an aided institution he would be entitled to pension, taking into account the entire service. By the memorandum of 8th January, 2007 the government further clarified that those who retired from DA getting schools would not be eligible to get pension.

Taking advantage of the existing notifications, the respondent made himself eligible for pension by relinquishing his service in the unaided DA getting school St. Lawrence High School on 31st March, 2005, joining an aided high school and rendering service there till 31st January, 2009.

At the date of his joining Sonamukhi Janakalyan Vidyapith in 2005, the said notifications or memorandum of the government dated 15th May, 1985 and 20th May, 1988 were in force.

By a communication dated 18th January, 2012 by the Deputy Secretary to the Government of West Bengal to the Director of School Education, West Bengal with a copy marked to the respondent, it was stated that by virtue of the notification dated 19th April, 2006 the respondent's service in St. Lawrence school would not be counted as pensionable service. Furthermore, the respondent's service in the aided schools prior to joining St. Lawrence would also not be so counted as there was "break in the service". Hence, the respondent's service upto 31st March, 2005 could not be treated as qualifying service for the purpose of pension. He had served for only 3 years 10 months in Sonamukhi Janakalyan Vidyapith, South Parganas from 9th February, 1982 to 31st March, 2005 which did not satisfy the qualifying service requirement of 10 years.

First of all the above memoranda/notifications are administrative instructions without any statutory force for inter alia regulating, imparting of education in the state, by the government. For teaching and non teaching employees in aided and DA getting schools are concerned they also constitute the terms and conditions of service. Based on these notifications, the respondent joined an aided school on 1st April, 2005 after St. Lawrence and retired from there on 31st January, 2009. By the two notifications of 1985 and 1988 the respondent by retiring from an aided school in 2009 became entitled to receive pension by counting his service in the aided and DA getting schools in computing his qualifying service. If the government, whilst the respondent was teaching up to 31st March, 2005 in the DA getting school, St. Lawrence had made the notification which it did thereafter, on 19th April, 2006 and 8th January, 2007, it would have been perfectly within its rights because according to the notifications under which the respondent had rendered service throughout his career, his termination of service in a DA getting schools would not make him eligible for pension. But on the strength of the self-same notifications while they were operative, he joined an aided school at the end of his career so that he could get pension under them. Now, this valuable right had vested in him when he joined the last aided school in 2005. These terms and conditions as laid down by the 1985 and 1988 notifications as far as they applied to the respondent could not have been changed by the 2006 or 2007 notification. This was the legitimate expectation of the respondent. The application of the said notifications to the respondent is wrongful, unfair, arbitrary, unreasonable and unjust.

We hold that the said notifications of 2006 and 2007 will not apply to the respondent's service and that his service in St. Lawrence High School shall not constitute a break in service. We direct that the respondent shall be entitled to add the length of his service in St. Lawrence High School to his service in the aided schools. He will be entitled to get pension and other retirement benefits according to law, as if there, was no break in his service career.

Accordingly the impugned judgment and order is affirmed and modified to the above extent.

The appeal is disposed of.

Urgent certified photo copy of this judgment and order, if applied for, be furnished to the appearing parties on priority basis upon compliance of necessary formalities.

I agree.